IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4834 OF 2004
(Condonation of Delay)
ALONG WITH
CRIMINAL APPLICATION NO.1175 OF 2005
(For Leave to Appeal)

The State of Maharashtra — Appellant
vs.
Mahadu Jalam Solanke & ors. — Respondents

Ms.U.V.Kejriwal, Additional Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 21st February 2005

P.C.

Heard Ms.U.V.Kejriwal, the learned Additional Public Prosecutor.

2. In Sessions case No.52/2001, Sahebrao Mahadu Solanke (original accused no.1), Mahadu Jalam Solanke (original accused no.2) and Rajkorbai Mahadu Solanke (original accused no.3) were tried for the offences punishable under Sections 498-A, 201 and 302 read with 34 of IPC for having committed murder of Manisha, screening of evidence and demand of dowry. Upon conclusion of trial, the Additional Sessions Judge vide his judgment dated 28th November 2003 convicted the original accused no.1-Sahebrao Mahadu Solanke for the offence punishable under Sections 498-A, 201 and 302 of the IPC. However,

original accused nos. 2 and 3 who are present respondents were acquitted. Aggrieved thereby, the State preferred the criminal appeal on 28th November 2003. The said Criminal appeal has now been converted in the criminal application for leave to appeal. However, since criminal appeal (now criminal application for leave to appeal) suffers from delay exceeding 230 days, the application has been made by the State for condonation of delay.

3. As already noticed above, as regards the present respondents (original accused nos. 2 and 3) judgment of acquittal was passed on 28th November 2003. An application for certified copy of the judgment was made on 12.12.2003. The certified copy was ready and delivered on that very day. The concerned public prosecutor who conducted the trial by his communication dated 08.01.2004 opined for filing the criminal appeal against the judgment of acquittal. The Law and Judiciary Department upon receipt of the opinion of the public prosecutor, Nasik scrutinised the papers and decided to file appeal by issuance of Government resolution dated 01.03.2004. The office of the Public Prosecutor, High Court, Appellate Side, Mumbai received the Government resolution dated 01.03.2004 on 04.03.2004. However, the criminal appeal was filed on 29.10.2004.

4. Even if we give latitude of time having been spent upto 04.03.2004 when the Public Prosecutor, High Court, Appellate Side, Mumbai received the Government resolution dated 01.03.2004 for challenging the judgment of acquittal in respect of the present respondents, the delay therefrom (04.03.2004) until 29.10.2004 is not at all explained sufficiently. In paragraph 5 of the application the delay is explained thus:

> " It was due to heavy work load, pressure of work, my illness and non-availability of stenographers after 4.45 p.m. Normally I used to do the drafting work on my own computer, but last few months it was not in working condition. Hence, the delay was caused."

5. A careful analysis of the aforesaid explanation shows that delay was due to (a) heavy workload; (b) pressure of work; (c)illness and (d) non-availability of stenographers after 4.45 p.m.

6. In so far as reasons viz. heavy workload, pressure of work and non-availability of stenographers are concerned, we find that such explanation is stereotype and general and cannot be accepted as sufficiently explaining long delay of more than seven months. As regards the explanation of illness, from the application we are unable to know the expression "my illness" relates to whom; whether the public prosecutor who has

signed the application or the affiant who has affirmed the application. The application seems to have been prepared and signed by Mr.A.M. Shringarpure, Additional Public Prosecutor and affiant is Smt.S.A.Pednekar, Superintendent, Office of Public Prosecutor. Besides that no details of illness have been given. The ground of illness, thus, is as vague as it could be.

7. The delay in filing the criminal application for leave to appeal is thus not sufficiently explained.

8. In order to satisfy ourselves whether even otherwise a case for ground of leave is made out or not, we heard the learned Additional Public Prosecutor and perused the impugned judgment.

9. Nothing could be shown from the evidence by the learned Additional Public Prosecutor that connects the present respondents with the crime. The memo of appeal makes an interesting reading. Except the general grounds that are set out in paragraphs (a) to (g) the only specific ground that is set out is in paragraph (h) and that ground is that the present respondents were not present at the time of funeral of deceased Manisha and that indicated the guilty mind of the said accused persons.

10. We are afraid, in the light of the evidence that has been produced by the prosecution, the acquittal of the present respondents cannot be faulted.

11. In the circumstances, criminal application for condonation of delay as well as criminal application for leave to appeal are rejected.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)